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April 6, 2018

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The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

I write to ask the Federal Communications Commission (FCC) to open an investigation into whether Cambridge Analytica has or has ever had access to consumers viewing or other personal data, whether Cambridge Analytica used such data to influence the 2016 Presidential Election, and whether Cambridge Analytica's use of such data violated the Communications Act.^[1]

Reports have surfaced indicating that Cambridge Analytica—a data analysis firm with close ties to President's Trump's 2016 Election Campaign—has used consumers' personal information without consent.^[2] Reports have focused primarily on how Cambridge Analytica obtained intimate data from more than 87 million Facebook users.^[3] Yet, statements made by officers at Cambridge Analytica indicate that they may have also obtained the specific viewing habits of many subscribers in the United States.^[4]

Specifically, Cambridge Analytica program director Brittany Kaiser claimed as part of a 2016 interview that the company purchased consumers viewing or other personal data.^[5] Kaiser notes that these data are exceptionally detailed and can “tell you exactly when someone logs in,

^[1] See 47 U.S.C. § 551.

^[2] Time, *Facebook's Cambridge Analytica Controversy Could Be Big Trouble for the Social Network. Here's What to Know* (Mar. 21, 2018) (time.com/5205314/facebook-cambridge-analytica-breach/).

^[3] *Id.*

^[4] Commonwealth, *Voter Analytics with Brittany Kaiser CW 51-Transcript* (Mar. 29, 2016) (www.commonwealthy.com/voter-analytics-transcript/).

^[5] *Id.*

what they are recording, [and] what they fast forward through.”^[6] What’s more, reports indicate that Cambridge Analytica’s Chief Revenue Officer claimed earlier this year that the company could not only use such viewing habits to understand voters’ preferences, but that the company could also use that data in conjunction with new smart TVs and set-top-boxes to target political content on televisions.^[7]

Given these reports, the FCC has a responsibility to launch an investigation to uncover whether any entity that the FCC regulates sold or otherwise provided any subscriber data to Cambridge Analytica and, if so, whether such provision of data violated the Communications Act. Sections 338 and 631 of the Communications Act provide several protections for sensitive subscriber information of the type Cambridge Analytica claims to have obtained. The privacy protections in both Sections 338 and 631 include a requirement that operators provide an annual notice to their subscribers describing the “nature” of the information that will be collected by the operator and the nature of the use of such information.^[8] Such disclosure must also detail the types of persons with whom the data may be shared.^[9] Importantly, both sections also require that an operator obtain the prior written or electronic consent of a subscriber before collecting personally identifiable information.^[10] Finally, the law requires that operators “take such actions as are necessary” to prevent unauthorized access to subscribers’ viewing habits.^[11]

Given the specific protections laid out under the Communications Act and the troubling scope of the recent revelations regarding Cambridge Analytica, I believe the Commission should bring its investigatory resources to bear to protect consumers’ privacy. Specifically, I request the Commission investigate whether any entity under the FCC’s oversight provided its subscribers’ personally identifiable information or viewing habits to Cambridge Analytica, and whether such disclosure violated the Communications Act. Further, such an investigation should seek to uncover the business relationship between these companies and Cambridge Analytica, including any understanding by the companies of how Cambridge Analytica used such data and whether Cambridge Analytica planned to use the data to influence the 2016 Presidential Election.

^[6] *Id.*

^[7] Fast Company, *Trump’s Data Gurus Are Now Turning Their Attention To Your TV* (Nov. 15, 2017) (www.fastcompany.com/40477438/cambridge-analytica-has-your-tv-in-mind-and-an-unlikely-ally).

^[8] 47 U.S.C. § 551(a)(1)(A); 47 U.S.C. § 338(i)(1)(A)

^[9] 47 U.S.C. § 551(a)(1)(B); 47 U.S.C. § 338(i)(1)(B)

^[10] 47 U.S.C. § 551(b)(1); 47 U.S.C. § 338(i)(4)(A)

^[11] 47 U.S.C. § 551(c)(2)(C)(ii)(I); 47 U.S.C. § (i)(4)(B)(iii)(II)(aa)

I appreciate your assistance with this important matter. Please provide a response to this letter within three weeks of receipt. Should you have any questions regarding this request, please contact Kevin Dollhopf in the Office of Congresswoman Debbie Dingell at (202) 225-4071

Sincerely,

A handwritten signature in blue ink that reads "Debbie Dingell". The signature is written in a cursive, flowing style.

Debbie Dingell
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

April 27, 2018

The Honorable Debbie Dingell
U.S. House of Representatives
116 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Dingell:

Thank you for your letter regarding the possible acquisition and use of subscriber data by Cambridge Analytica. Specifically, you reference two articles detailing allegations that cross-platform analytics company ComScore, direct broadcast satellite company DISH, and set-top box maker TiVo may have given Cambridge Analytica, as you put it, “the specific viewing habits of many subscribers in the United States.”¹

You request that the Commission commence an investigation into these allegations for possible violations of Sections 338(i) and 631 of the Communications Act. With a few exceptions not relevant here, these provisions generally prohibit satellite and cable operators from disclosing a subscriber’s personally identifiable information (PII) without the prior written or electronic consent of that subscriber, although Congress specified that the definition of PII in each section “does not include any record of aggregate data which does not identify particular persons.”² Notably, these statutory provisions provide subscribers with a private right of action to file claims in U.S. District Court.

Given the FCC’s limited authority in this area—neither TiVo nor ComScore is a satellite or cable operator and it is unclear whether DISH shared individual PII or only “aggregate data which does not identify particular persons”—I believe the appropriate investigatory authority is not the Federal Communications Commission but instead the Federal Trade Commission. As our nation’s premier privacy cop on the beat, the FTC has already announced that it will examine Facebook’s conduct with respect to Cambridge Analytica. Accordingly, I have therefore forwarded your inquiry to my counterpart there to examine further. I am sure this inquiry will be in good hands, given our sister agency’s well-established record of protecting consumers’ privacy and mandate to examine potentially unfair and deceptive trade practices.

¹ See John Tsarpalas, Voter Analytics with Brittany Kaiser CW 51-Transcript, *Commonwealth*, <https://www.commonwealthy.com/voter-analytics-transcript/> (Mar. 29, 2016); Ann Marlowe, Trump’s Data Gurus Are Now Turning Their Attention To Your TV, *Fast Company*, <https://www.fastcompany.com/40477438/cambridge-analytica-has-your-tv-in-mind-and-an-unlikely-ally> (Nov. 15, 2017).

² 47 U.S.C. § 338(i)(2)(A); 47 U.S.C. § 551(a)(2)(A).

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I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ajit V. Pai". The signature is fluid and cursive, with the first name "Ajit" being more prominent.

Ajit V. Pai